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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,273	03/16/2001	Hiroyuki Nishii	Q63124	4971

7590 11/22/2005

SUGHRUE, MION, ZINN, MACPEAK & SEAS
2100 pennsylvania Avenue, N.W.
Washington, DC 20037

EXAMINER

GARRETT, DAWN L

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/809,273	Applicant(s) NISHII ET AL.	
	Examiner Dawn Garrett	Art Unit 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-6 and 9-14 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4, 10 and 13 is/are allowed.
- 6) ☒ Claim(s) 3, 5, 6, 9, 11, 12 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This Office action is responsive to the response dated September 9, 2005. Claims 3-6 and 9-14 are pending.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 5 and 6 are again rejected under 35 U.S.C. 102(b) as being anticipated by Cook (US 3,429,717). Cook describes a laminate film wrapper comprising two polymeric layers such as polymers of alpha olefins with a antioxidant layer in between the two polymer layers. A nylon may be further laminated to one of the polymeric layers (see col. 2, lines 7-26). The nylon reads upon the non-porous sheet. The polyolefin reads upon the porous sheet. The antioxidant is the removing agent. The film is used as a wrap per the requirement of a container. The phrase "for an electroluminescent device" is considered to be an intended use and has not been given patentable weight. The antioxidant of the film absorbs oxygen. See entire patent.
4. Claims 5 and 6 are again rejected under 35 U.S.C. 102(b) as being anticipated by Farrell et al. (US 4,536,409). Farrell et al. discloses an oxygen scavenger multi-layered film for food or beverage containers (see col. 1, lines 6-22). The laminate sheets may comprise a polymer oxygen barrier layer per the non-porous layer, a polymer layer incorporating an oxygen scavenger per the removing agent and at least one polymer protective layer per the porous layer (see col. 10, claim 9). The polymeric protective layer may be a polyolefin (see col. 12, claims 25 and 26).

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5. Claims 3, 9, 11, 12, and 14 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Cook (US 3,429,717) in view of Biebuyck et al. (US 5,734,225). Cook describes a laminate film wrapper for a hermetically sealed package comprising two polymeric layers such as polymers of alpha olefins with an antioxidant layer in between the two polymer layers. A nylon may be further laminated to one of the polymeric layers (see col. 2, lines 7-26). The nylon reads upon the non-porous sheet. The polyolefin reads upon the porous sheet. The antioxidant is the removing agent. The film is used as a wrap per the requirement of a container. The antioxidant of the film absorbs oxygen (see entire patent). Cook describes the packaging as being useful for hermetically sealing food, but fails to teach the packaging could be used to protect an organic electroluminescent device. Biebuyck et al. discuss the importance of protecting an organic electroluminescent device from oxidation by encapsulating the device (see col. 1, lines 7-37 and col. 2, lines 43-44) and further describes it is desirable to have a protective film directly adjacent the EL device (see col. 2, lines 53-61). It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the film taught by Cook as part of a container for an organic electroluminescent device, because Cook teaches the film contains an antioxidant for protection against oxidation and Biebuyck et al. teaches organic electroluminescent devices need packaging in order to protect the devices from oxidation and subsequent limited lifetime of the device due to oxidation.

6. Claims 3, 9, 11, 12 and 14 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 4,536,409) in view of Biebuyck et al. (US 5,734,225). Farrell et al. discloses an oxygen scavenger multi-layered film for food or beverage containers (see col. 1, lines 6-22). The laminate sheets may comprise a polymer oxygen barrier layer per

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the non-porous layer, a polymer layer incorporating an oxygen scavenger per the removing agent and at least one polymer protective layer per the porous layer (see col. 10, claim 9). The polymeric protective layer may be a polyolefin (see col. 12, claims 25 and 26). Farrell et al. describe the packaging as being useful for hermetically sealing food, but fails to teach the packaging could be used to protect an organic electroluminescent device. Biebuyck et al. discuss the importance of protecting an organic electroluminescent device from oxidation by encapsulating the device (see col. 1, lines 7-37 and col. 2, lines 43-44) and further describes it is desirable to have a protective film directly adjacent the EL device (see col. 2, lines 53-61). It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the film taught by Farrell et al. as part of a container for an organic electroluminescent device, because Farrell et al. teach the film contains an antioxidant for protection against oxidation and Biebuyck et al. teach organic electroluminescent devices need packaging in order to protect the devices from oxidation and subsequent limited lifetime of the device due to oxidation.

Allowable Subject Matter

7. Claims 4, 10, and 13 are allowed for the reasons previously given in a previous Office action.

Response to Arguments

8. Applicant's arguments filed September 9, 2005 have been fully considered but they are not persuasive.

Applicant argues with respect to Cook that the "polymers of alpha olefins" described in Cook are not a porous material. Applicant argues with respect to Farrell that the polymer

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protective layer is not porous. Applicant also argues with respect to Biebuyck that a porous sheet is not taught. The examiner submits that each of these references teach a polyolefin sheet. Applicants list polyolefin as a preferred material for the porous sheet in the specification at page 6, seventh through ninth lines. Since the polyolefin material taught by each of Cook, Farrell, and Biebuyck is the same as a preferred material in the specification, the polyolefins are deemed to meet the claim limitation. [Recitation of a newly disclosed property does not distinguish over a reference disclosure of the article or composition claims. *General Electric v. Jewe Incandescent Lamp Co.*, 67 USPQ 155. *Titanium Metal Corp. v. Banner*, 227 USPQ 773. Applicant bears responsibility for proving that reference composition does not possess the characteristics recited in the claims. *In re Fitzgerald*, 205 USPQ 597, *In re Best*, 195 USPQ 430.]

Applicant states, "The Examiner might misunderstand that the term 'porous' is synonymous with the phrase 'gas permeable.'" Applicant then states that the porous sheet of the present claims is produced by a certain method and has a certain average pore size. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., method making and pore size) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The examiner respectfully submits that the porous sheet of the claims is not restricted to a certain pore size. Per M.P.E.P. § 2145, the arguments of counsel cannot take the place of evidence in the record. *In re Schulze*, 346 F.2d

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600, 602, 145 USPQ 716, 718 (CCPA 1965); *In re Geiseler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is (571) 272-1523. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dawn Garrett
Primary Examiner
Art Unit 1774

November 16, 2005